

REMARKS/ARGUMENTS

In response to the Office Action of July 15, 2005, Applicants request re-examination and reconsideration of this application for patent pursuant to 35 U.S.C. 132.

Claim Status/Support for amendments

Claims 1, 6-8, 11-28 remain pending in the instant application. Claims 1, 7, 11-14, 17, 19, 21-24, 26-28 have been amended herein.

No new matter has been added by the amendments to the claims made herein.

Claims 1 and 17 have been amended to correct the double inclusion of the limitation "body member", previously recited in claim 27, as suggested by the Examiner. Claims 7 and 19 have been amended to correct an inadvertent typographical error: ";" which has been replaced with ---. Claims 1, 11, 17, 27, 28 have been amended herein to replace all recitations of "external" with --outer-- for consistency. Similarly, claims 14, 17, 21, 24, 27 have been amended to replace all recitations of "nozzle" with --tip-- for consistency. The dependency in claim 26 has been changed from claim "1" to --27--, to remove substantial duplication of claimed limitations.

Claim 27 has been amended herein to specifically recite the engagement means cooperating with the caulking tube tip outer

surface to prove *inwardly radially* compressive engagement between the at least one sealing means caulking tube tip outer surface to prevent air from entering the caulking tube thereby preserving the unused contents for future use. Emphasis added. In addition, the inner cavity including a caulking tube tip engagement means and at least one sealing means, said at least one sealing means integrally molded therein.

Support for these amendments can be found throughout the specification as originally filed, see, for example; page 13, lines 2-9; page 14, lines 20-24; original claims 12-13.

Request for rejoining of claims under Ochiai

Pending claims 13-15, 23-25 are currently withdrawn from further consideration as being directed to the non-elected invention. Applicants respectfully request that the Examiner consider joining them with claims of the elected invention upon the Examiner's determination that the claims of the elected invention are allowable, since if the at least one sealing means is found to be novel then all modes of its operation should also be found novel.

Rejections under 35 USC 112, second paragraph

Claims 1, 6-8, 11-12, 16-22, 26-28, as previously presented, stand rejected under 35 USC 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner asserts that there is insufficient antecedent basis for the limitation "said caulking tube tip and said caulking tube" in lines 9-10 of claim 27.

Applicants have hereby positively recited "a caulking tube tip integrally formed with a caulking tube" in the preamble of the claim.

Additionally, the Examiner alleges the limitation "a body member" as recited claim 27 and claim 1 is vague and unclear because it is not clear if the claimed limitation in claim 1 is the same as the limitation claimed in claim 27.

Applicants have amended claims 1 and 17 herein to correct the double inclusion of the limitation "body member", previously recited in claim 27 as suggested by the Examiner.

Applicants have now clarified the metes and bounds of the claims (1, 6-8, 11-12, 16-22, 26-28) and respectfully request that the above-discussed rejection under 35 U.S.C. 112, second paragraph be withdrawn.

Rejection under 35 USC 102(b)

Claims 1, 6, 16-18, 26-28, as previously presented, stand rejected under 35 USC 102(b) as allegedly being anticipated by Bostelman (US Patent no. 5,295,601).

The Examiner alleges that Bostelman discloses a sealing cap 10 for caulking tube nozzle 22 which comprises a body member as seen in FIG. 3, the body member including a solid top portion having a depending annular wall forming an inner cavity 28, a caulking tube tip engagement means and at least one sealing means as seen in FIG. 4, wherein the engagement means cooperates with the caulking tube tip to provide compressive engagement between the at least one sealing means and the caulking tube tip, thereby preventing air from entering the caulking tube. The Examiner points to column 4, lines 1-15 for support.

Applicant respectfully disagree with the Examiner's assertions.

First, it is well established that in order for a claim to be anticipated each and every element as set forth in the claim must be found, either expressly or inherently described in a single prior art reference (see MPEP 2131).

Applicants respectfully submit that the Office action does not clearly communicate which elements in the Bostelman reference the Examiner considers the "engagement means" and the "at least one sealing means". The Office action simply points to the FIG. 4 for

support without clearly reciting which reference numbers in Bostelman correspond to those of the instant invention. The Office action should clearly communicate the findings, conclusions and reasons which support them. See MPEP 2106 VII.

Thus, it is Applicant's understanding that the Examiner is referring to integral interior threads 32 in Bostelman as corresponding to the engagement means and the orifice retainment rod 18 as corresponding to the at least one sealing means recited in present invention. Upon closing the tube of Bostelman, the orifice retainment is forced down into the applicator tube 22 whereby either the threads on the threaded metal insert 30 or the internal threads 32 will engage the soft plastic material from which the applicator tube 22 is manufactured. It is the threaded engagement which effectively locks the caulk cartridge cap 10 in position on the applicator tube 22, whereby an effective airtight seal is provided.

Applicants assert that the claims, as amended herein, positively recite, *inter alia*, a sealing cap for sealing a caulking tube tip having an inner cavity that includes a caulking tube tip engagement means and at least one *sealing means*. The engagement means cooperates with the caulking tube tip outer surface to provide *inwardly radially* compressive engagement between the at least one sealing means and the outer surface thereby preventing air from entering the caulking tube. (Emphasis added.)

Moreover, claim 27, now positively recites the inner cavity having the at least one sealing means *integrally molded* therein.

The engagement means of the instant invention, as now claimed, cooperates with the outer surface of the tip to provide *inwardly radially* compressive engagement between the at least one sealing means and the outer surface. Conversely, the tapered orifice retainment is forced into the applicator tube 22 of Bostelman, which acts like most prior art caulking tube caps to block the orifice of the opened nozzle to inhibit the passage of air into the tube. This type of sealing by way of blocking the orifice has only achieved limited success, as discussed in the background of the invention section at page 2, lines 14-19 of the instant specification. At best, the engagement means of Bostelman would provide an *outwardly* radially compressive engagement between the sealing means and the tip. The instant invention offers a substantial improvement over the Bostelman reference as it adequately seals the contents of the caulking tube without the need for a tapered rod to block the nozzle, as it would require substantial cleaning to remove any caulking material left on the rod between use.

In addition, the orifice retainment rod 18 of Bostelman has a rounded end 20 which facilitates insertion of the rod 18 into the applicator tube 22 forming a part of a caulk tube or cartridge 24, as illustrated in FIG. 4, while the remaining end 26 of the rod is

frictionally retained within an interior cavity 28 formed in the plug member 12. See column 3, lines 53-59 of Bostelman. Thus, the rod of Bostelman is not integrally molded within the interior cavity, as currently required in the instant claims, but must be inserted prior to use by the user. This means of removably retaining the rod within interior of the cap can be detrimental to the plug device should the force required to remove the cap with rod within a nozzle becomes greater than the frictional force retaining the rod within the cap, thereby leaving the unattached rod stuck inside the nozzle, separate from the interior of the cap.

Accordingly, as evidenced by the above discussion, each and every element of the rejected claims cannot be found in the reference of Bostelman and respectfully request that this rejection under 35 USC 102(b) now be withdrawn.

Rejection under 35 USC 103(a)

Claims 7-8, 19-20 as previously presented, stand rejected under 35 USC 103(a) as allegedly being unpatentable over Bostelman (US Patent No. 5,295,601) in view of McIntosh (US Patent No. 4,307,821).

The Examiner asserts that Bostelman has taught all of the features of the claimed invention except that the outer surface includes a gripping means constructed and arranged to provide gripping for rotational engagement between the caulking tube tip

and the sealing cap.

The Examiner alleges McIntoch teaches the user of cap 30, having a gripping means 40 on the outer surface.

The Examiner then concludes that it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to modify Bostelman's cap so as to provide a knurled external finish taught by McIntosh at column 3, lines 6-8 to facilitate gripping and rotation of the cap by the user.

Applicants respectfully disagree with the Examiner's determination that the claimed subject matter is obvious.

However, in the interest of compact and efficient prosecution claim 1 has been amended to positively recite a sealing cap for sealing a caulking tube tip having an inner cavity that includes a caulking tube tip engagement means and at least one sealing means and the inner cavity having the at least one sealing means *integrally molded* therein; wherein the engagement means cooperates with the caulking tube tip outer surface to provide inwardly radially compressive engagement between the at least one sealing means and the outer surface thereby preventing air from entering the caulking tube.

As established above, Bostelman fails to teach or suggest all of the claim limitations, specifically, the engagement means fails to cooperate with the caulking tube tip outer surface to provide inwardly radially compressive engagement between the at least one

sealing means and the outer surface, as currently recited in the instant claims.

Applicants respectfully submit that the Examiner has failed to satisfy all the criteria necessary to establish a proper rejection of claims under 35 USC 103(a); 1) suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine teachings; 2) reasonable expectation of success and 3) the reference or references when combined must teach or suggest all of the claim limitations.

Claims 11-12, 21-22 as previously presented, stand rejected under 35 USC 103(a) as allegedly being unpatentable over Bostelman (US Patent No. 5,295,601) in view of Ray (US Patent No. 5,248,071).

The Examiner asserts that Bostelman has taught all of the features of the claimed invention except that the sealing cap includes at least one integrally formed sealing ring. Ray teaches the user of a caulking tube sealing cap 100, where the sealing cap includes at least one integrally formed sealing ring 111,113 at column 4, lines 40-51.

The Examiner then concludes that it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to modify Bostelman's inner cavity by providing

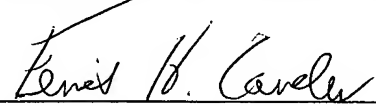
Ray's, annular sealing ring within Bostelman's inner cavity, as taught by Ray, in order to provide a cap with an annular ring surface to assure an airtight connection.

In light of all of the above remarks with respect to Bostelman, Applicants respectfully submit that the claims as currently claimed invention now distinguishes over Bostelman, and respectfully request that this rejection of the claims under 35 USC 103(a) now be withdrawn.

CONCLUSION

In light of the foregoing remarks, amendments to the specification and amendments to the claims, it is respectfully submitted that the Examiner will now find the claims of the application allowable. Favorable reconsideration of the application is courteously requested.

Respectfully submitted,



Ferris H. Lander
Registration # 43,377

McHale & Slavin, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33410
(561) 625-6575 (Voice)
(561) 625-6572 (Fax)

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